83-199

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

LILIA KAPPAS,
Administratrix of the Estate of
Florence Kappas, deceased,
Petitioner

v.

CHESTNUT LODGE, INC., DEXTER BULLARD, JR., M.D.,
CORRINE COOPER, M.D., JOHN P. FORT, M.D.
SOL HERMAN, M.D., PING-NIE PAO, M.D.,
AND JONATHAN TUERK, M.D.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Was the Court of Appeals correct when it affirmed the District Court's decision, based on a tortuous and erroneous interpretation of a state statute, to exclude substantive evidence of medical malpractice thereby denying petitioner a fair trial and Due Process of Law?

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OPINION BELOW

The United States Court of Appeals for the Fourth Circuit rendered its opinion on June 9, 1983. A copy of that opinion is attached in petitioner's appendix.

JURISDICTION

This case was a diversity case tried in the Federal District Court for the District of Maryland pursuant to 28 U.S.C. §1332 (a) (1). Jurisdiction of this Court is therefore invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT OF FACTS

In 1964 an individual named Florence Kappas entered a long term psychiatric care facility located in Rockville, Maryland. This institution was named Chestnut Lodge. Ms. Kappas, who was 46 years old at the time, had been transferred by her family from a state run facility in New York. Florence Kappas, at the time of admission to Chestnut Lodge had spent nearly three years at the New York facility, and had a history of mental disturbances that began in the 1940's.

Florence Kappas spent almost nine years at Chestnut Lodge. She was diagnosed as a schizophrenic and underwent intensive psychotherapy while at the Lodge. Ms. Kappas also had an eating disorder which caused her to generally refuse food and resulted in extremely low body weight. During the first five years of Florence's stay at Chestnut Lodge she had Dr. Dewayne Phillips as her psychotherapist. During this time significant progress was made in the battle against the patient's schizophrenia and her eating disorder.

In 1969, Dr. Phillips left the Lodge and Dr. Sol Herman was assigned as the psychotherapist for Florence Kappas. After an initial period in which there were ups and downs in the therapy, Florence Kappas entered a long period in which she became mute and refused to participate in the therapy with Dr. Herman. In 1970, Florence Kappas was allowed to spend evenings in a private room across the street from Chestnut Lodge. Nevertheless, during the days, she remained at the Lodge ward undergoing therapy in which she did not participate nor benefit from.

In May of 1973, Florence Kappas suffered a serious loss of weight. A physical examination by the Lodge immediately preceeding that period revealed no physcial abnormalities.

Nevertheless after her weight dropped to 82 pounds, Florence was admitted to a nearby medical hospital.

Upon admission to Suburban Hospital, Florence Kappas was declared mentally incompetent and underwent tests to determine the cause of her debilitated condition. On May 25, 1973 Florence Kappas died. Her immediate cause of death was listed as a pulmonary embolism.

On May 18, 1976, a civil action was filed for damages by Lilia Kappas, the sister of Florence, against Chestnut Lodge, Inc., and individual staff members. In addition the complaint named as defendants Suburban Hospital and several individual staff members. The complaint alleged medical malpractice, breach of contract and invasion of privacy on the part of the defendants.

A jury trial was held in March of 1981 as to Chestnut Lodge and its individual employee — respondents.[1] The jury found for respondens on all counts. An appeal was taken and in an opinion issued on June 9, 1983 the Fourth Circuit affirmed the verdict in all respects.

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[1]Suburban Hospital and the individual Suburban defendants were severed.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS ERRED WHEN IT AFFIRMED A DISTRICT COURT'S INTERPRETATION OF A STATE STATUTE THAT DEPRIVED PETITIONER OF CRITICAL SUBSTANTIVE EVIDENCE OF MEDICAL EVIDENCE, THEREBY DENYING PETITIONER HER RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW

The tragedy of the life and death of Florence Kappas is not just that she was allowed to emotionally and physically deteriorate while in the care of Chestnut Lodge. The real tragedy is that this deterioration took place under the watchful eye of dozens of doctors, nurses and members of the Lodge staff. The supervision of Florence Kappas' decline by the medical and social staff and their continued failure to initiate preventive action underlines the callous disregard for decent human life which served as the basis for the petitioner's lawsuit.

Because of the unique nature of Florence Kappas' life as a long term patient in a psychiatric facility, the only method by which the petitioner could demonstrate the control and direction that Chestnut Lodge personnel had was through the patient care records maintained by the Lodge. Of these documents, three categories were present. The first were nurses notes, that is daily entries made by the ward staff. The second category were monthly progress notes by Dr. Herman, the psychotherapist. The last category consisted of the transcripts of periodic staff conferences designed to review Florence's progress. Of these only the staff conferences are able to demonstrate the various decisions made by the Lodge in Florences' life and the persons with knowledge and responsibility for those decisions.

On March 5, 1981, four days before trial, respondents filed

a motion *in limine* asking the trial court to preclude the petitioner from "introducing any and all records regarding the Medical Review Committee meetings concerning plaintiff Kappas held at Chestnut Lodge." The documents in question were produced by respondents in pre-trial discovery and had been extensively utilized by all of the expert witnesses. After petitioner attempted to utilize one of the staff conferences in the direct examination of a psychiatric expert, the District Court ordered a hearing. Dr. Dexter Bullard, Director of the Lodge then took the stand and testified to his belief that the staff conferences were statutorily protected. The District Court agreed with the position of respondents and, after a short recess, declared that the document (the December 9, 1970 staff conference) was inadmissable.

The District Court and the Court of Appeals based their decision on an interpretation of Article 43, §134A (d) of the Maryland Code (1980) which provides in part:

> "The proceedings, records and files of a Medical Review Committee are neither discoverable nor admissable into evidence in any civil action arising out of matters which are being reviewed and evaluated by the committee."

Section 134A (b) defines a "Medical Review Committee" and includes:

> "(3) A committee of the medical staff or other committee of a hospital: if the committee was formed and approved by the governing board of the hospital. . ."

Petitioner believes that the Courts below erred when they ruled these documents inadmissable and seriously prejudiced the presentation of petitioner's case.

A. ***The Chestnut Lodge Staff Conferences Are Not Within The Meaning Of The Statute And The District Court's Ruling To The Contrary Petitioner of Due Process of Law.***

Article 43, Section 134A was passed by the Maryland Legislature in 1976, three years after the last staff conference in question. It has subsequently been amended, although it remains basically as it did in 1976. The position of respondents at trial was that the staff conferences were the equivalent of Medical Review Committees and thus exempt from discovery and admission as trial evidence. However, the statute itself, as well as Dr. Dexter Bullard's testimony, undermines that position.

Petitioner maintains, as she did below, that Section 134A is designed to protect the confidentiality of Medical Review Committee that served as a peer review or disciplinary function only.

Although the legislative history of Section 134 A is very sparse, the few published references to the statute clearly refer to it as an attempt to protect and enhance in-house disciplinary review. *See*, Quinn, *Health Care Malpractice Claims Statute*, 10 U.Bal.L.Rev. 74, 78 n. 22 (1980).

In the only published judicial opinion involving the statute, the reasoning of the Maryland court's decision on 134A leads to the unescapable conclusion that the section was not designed to protect the type of documents which the District Court suppressed. *Unnamed Physician v. Commission on Medical Discipline*, 258 Md. 1 400 A.2d 396 (1979).[2] In that case, the documents were the product of a medical

[2] It should be noted that this was the only case law cited by the Court of Appeals in reaching its decision.

review committee whose purpose was disciplinary. 400 A.2d at 399. The entire thrust of the law, as that court saw it, was to protect such committees from undue harassment — because such committees serve an important role in improving health care by the imposition of standards of discipline. Nowhere is the discussion of health services provided to an *individual* exempted.

Moreover, the language of the statute itself suggests that the records involved in the grant of confidentiality are those documents relating to qualifications, competence and performance of health care providers in the context of disciplinary proceedings. To assert otherwise, as the District Court concluded, would immunize not only all documents, but all physicians from liability.

In addition, the only case cited by the respondents below, *Bredice* v. *Doctors Hospital*, 50 F.R.D. 249 (D.D.C. 1970), supports the rationale that Section 134A does not prevent disclosure. In *Bredice*, the plaintiff asked for the following material:

> (1) Minutes and reports of any Board or Committee of Doctors Hospital or its staff concerning the death of Frank J. Bredice on December 11, 1966.
>
> (2) Reports, statements or memoranda, including reports to the malpractice carrier, reduced to writing, pertaining to the deceased or his treatment, no matter when or to whom made.
>
> 50 F.R.D. 249, 250

It is clear that the yearly staff conferences that were recorded while Florence Kappas was alive bear no similarity to the documents sought in *Bredice*. The District Court reached the

heart of the difference when it declared that the *Bredice* documents, "are not part of current patient care but are in the nature of a retrospective review. . ." 50 F.R.D. 250 Petitioner in the present case sought to introduce no staff conferences conducted after the death of the patient. None of the evidence remotely resembles the discovery sought in *Bredice*.

The net effect of the District Court's ruling was devastating to petitioner's case. The materials in question had been disclosed to petitioner during pre-trial discovery, and she had built her entire theory of medical malpractice around them. When the District Court Judge ruled, in the middle of trial, that the staff conference transcripts were protected by the state statute and therefore could not be admitted as substantive evidence, he ended petitioner's chance for a fair trial and denied her Due Process of Law.

B. ***The Immunity of Section 134A Is Not Retroactive***

Assuming, *arguendo*, that the staff conferences in the present case are within that class granted immunity, it is clear from the statute that Section 134A does not contemplate retroactivity of application as ordered by the District Court.

It is axiomatic that one of the fundamental pre-conditions to the establishment of a privilege is that the "communications must originate in a *confidene* that they will not be disclosed." 8 Wigmore, Evidence, §2285 at 527, quoted in *Garner* v. *Wolfinbarger*, 430 F.2d 1093, 1098 (5th Cir. 1970). Clearly, there was no expectation of confidence present years before the statute granting it was enacted.

To extend retroactive confidentiality, as the District Court did, is to ignore the reasons for such a privilege and the very purpose beyond the statute to the detriment of the petitioner.

C. ***The Defendants Waived Any Privilege By Production Of The Documents.***

The reported judicial decisions in this area of privilege deal exclusively with the exercise of the right in response to a pre-trial discovery request. *See, Morse* v. *Gerity*, 520 F. Supp. 470 (D. Conn. 1981). In the instant case, however, the District Court ruled as inadmissable documents which already had been produced by respondents.

Not only had these documents been produced years before trial, but they had served as the basis for the initial conclusions by all of the psychiatric experts; served as a substantial foundation for their opinion letters, and served as a substantial foundation for their opinion letters, and served as a basis for such other discovery as depositions. Even the trial judge noted his chagrin at the "eleventh hour" attempt by respondents to prohibit the use at trial of the conferences.

The present asserted privilege is not a rule of Federal evidence, but rather a state-created shield. *See*, Rule 501, Federal Rules of Evidence. Traditionally, waiver is the intentional relinquishment of a known right. *Johnson* v. *Zerbst*, 304 U.S. 458 (1938). If Dr. Bullard's trial testimony is to be believed, Chestnut Lodge somehow "knew" that these staff conferences were privileged when they took place during 1964-1973. Thus, production by the Lodge at any time would constitute a knowing waiver. On the other hand, even discounting Dr. Bullard's precognition of immunity, it must be admitted that the material was produced after the enactment of the statute which allegedly granted immunity. Under either scenario, the disclosure was undeniably made by respondents knowingly.

Petitioner, of course, admits that disclosure in pre-trial dis-

covery does not automatically make something admissable at trial. However, it should be clear that if the impediment to an otherwise admissable item is the desire to maintain confidentiality, that when that confidentiality is destroyed through voluntary disclosure, the item becomes admissable. In confidential privilege situations, once confidentiality is destroyed through voluntary disclosure, no subsequent claim of privilege can restore it, and knowledge or lack of knowledge of the existence of the privilege is irrelevant. *See*, California Evidence Code, §912, Graham, *Handbook of Federal Evidence* §511.1 p. 301 (1981); 8 Wigmore, *Evidence* § 2237 (1961).

Thus, even assuming the provisions of 134A do grant immunity once the production was made by respondents, the rationale of the statute evaporated and removed the legislative shield that prohibits admission.

CONCLUSION

The Court of appeals has erroneously created an immunity for the production of critical evidence, and reached that result by interpreting a state statute which did not purport to create such a sweeping immunity. The only state decision considering the statute reached a result contrary to the Court of Appeals. More importantly, the upshot of the Court of Appeals decision is that petitioner was denied a fair trial and Due Process of Law.

Respectfully submitted,

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APPENDIX

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1327

Lilia KAPPAS, Administratrix
of the Estate of
FLORENCE KAPPAS, deceased, *Appellant,*

v.

CHESTNUT LODGE, INC.; JAIME BUENAVENTURA, M.D.: DEXTER M. BULLARD, JR., M.D.; DEXTER M. BULLARD, SR., M.D.: CORRINNE COOPER, M.D.: MARTIN COOPERMAN, M.D.: JERRY DOWLING, M.D.; JOHN P. FORT, M.D.; OSWOLDO GUIMARAES, M.D.; SOL HERMAN, M.D.; ELIZABETH MOHLER: PING-NIE PAO, M.D.; DEWAYNE PHILLIPS, M.D.; JONATHAN TUERK, M.D.; and OTTO WILLS, M.D.; *Appellees.*

and

ROBERT R. MONTGOMERY, M.D.; JOHN C. SAIA, M.D.; and SUBURBAN HOSPITAL ASSOCIATION, INC. *Defendants.*

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

Argued: January 13, 1983 Decided: June 9, 1983

Before HALL, MURNAGHAN and SPROUSE, *Circuit Judges.*

Dennis M. Hart (Kenneth Michael Robinson on brief) for Appellant; Roy L. Mason (Donahure, Ehrmantraut & Montedonico on brief) and William J. Carter (Joel M. Savits, Carr, Jordan, Coyne & Savits on brief) for Appellees.

SPROUSE, *Circuit Judge:*

This appeal involves a diversity action brought by Lilia Kappas, as administratrix of the estate of Florence Kappas, her deceased sister, against Chestnut Lodge, Inc. and various individuals associated with Chestnut Lodge.[1] Kappas' complaint alleged medical malpractice, breach of contract, and invasion of privacy on the part of the Chestnut Lodge defendants. The district court entered a judgment after a jury verdict in favor of the defendants and Kappas appeals. We affirm.

Defendant Chestnut Lodge is a private psychiatric care facility in Rockville, Maryland. Florence Kappas entered the institution in 1964, and was diagnosed as a chronic schizophrenic. She remained at the hospital, first as a resident and later as an outpatient, until shortly before her death in June, 1973. Although there was a dispute at trial concerning the cause of Kappas' death, testimony established that as a result of one of her psychiatric problems she ate irregularly and that her weight had dropped to 78 pounds in the month preceding her death. The immediate cause of her death was listed as a pulmonary embolism.

From the date of Florence Kappas' admission into Chestnut Lodge until 1969, her condition apparently improved under the care of her then treating psychiatrist, Dr.

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[1] Kappas' complaint also named as defendants Suburban Hospital Association, Inc. and various individuals associated with the hospital. The district court granted a motion by these defendants for severance prior to trial, and they are not included in this appeal.

Dewayne Phillips. Following Phillips' departure in 1969, she was placed under the care of Dr. Sol Herman, after which she grew resistant to therapy. After Florence's death in 1973, Lilia Kappas filed this action pursuant to Maryland law, alleging malpractice on the part of Dr. Herman and others, breach of a third-party beneficiary contract by Chestnut Lodge, and invasion of privacy by various defendants responsible for administering psychotherapy and other forms of psychiatric therapy to her sister at the Lodge. The district court granted defendants' motion for a directed verdict of invasion of privacy claim. The jury then found for the defendants on all other counts.

The principal contention advanced by Kappas on appeal is that the district court erred when it refused to admit into evidence transcripts of certain Chestnut Lodge staff conferences. The hospital had held staff conferences in 1965, 1967, 1969 and 1973 relating to the treatment which the deceased received during the period prior to each conference. The conferences are an integral part of the administration of patient care at Chestnut Lodge. They were established by the Lodge's governing board as a means of evaluating the patient care and treatment programs at the hospital. All members of the hospital medical staff as well as other members of its clinical staff are invited to participate in the conferences. Discussions concerning individual patients are a regular part of the conferences, but do not become a part of a patient's chart or medical record at the institution. In the case of the deceased, the transcript of each conference was approximately 23 pages. During these conferences, the physicians and other hospital personnel having a role in Kappas' treatment discussed their impressions of the patient, her medical and family history, and her activities. The discussions also included comments by other physicians associated with the hospital.

The trial court ruled that the conferene transcripts were inadmissible by virtue of Article 43, section 134A(d) of the Maryland Code. That section provides:

> The proceedings, records, and files of a medical review committee are neither discoverable nor admissible into evidence in any civil action arising out of matters which are being reviewed and evaluated by the committee. This immunity does not apply to a civil action brought by a party to the proceedings of the review committee and claiming to be aggrieved by the decision of the committee. Also, this immunity does not extend to any records or documents considered by the committee which would otherwise be subject to discovery and introduction into evidence in a civil action.

Md. Health Code Ann. § 134A(d) (1980).[2]

Kappas contends that the statutue is designed only to protect the confidentiality of medical review committees functioning in a peer review or disciplinary capacity. She argues that it should not be interpreted to immunize the staff conference reports excluded by the trial court. Decisions of Maryland courts provide no guidance on the scope of section 134A.[3] The plain language of the statute, however, reflects

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[2] Since the entry of judgment in the present case, the statute has been recodified under Md. Health Occ. Code Ann. § 14-601 (1981).

[3] In the only Maryland case interpreting the statute, *Unnamed Physician v. Comm'n on Medical Discipline*, 285 Md. 1, 400 A.2d 396 (1979), the court's inquiry was limited to the question of whether the records and files of a medical review committee were protected by the statute from the subpoena power of the state's Commission on Medical Discipline. The case, therefore, provides no guidance on the question presented here.

that the Maryland legislature intended a broader application than that urged by Kappas. It is true that the statute immunizes only the proceedings, records, and files of a "medical review committee." The definition of such a committee, however, is broad enough to include the Chestnut Lodge staff conferences.

Section 134A(a)(2) defines a medical review committee as a "committee or board described in subsection (b) of this section, which is engaged in carrying out one or more of the functions described in subsection (c) of this section." Section 134A(b) lists six categories of "medical review committees," including:

> (3) A committee of the medical staff or other committee of a "hospital" or "related institution" as defined under this article if the committee was formed and approved by the governing board of the hospital or related institution, or the committee operates pursuant to written bylaws that have been approved by the governing board of the hospital or related institution. . . .

Section 134A(c) provides:

> The medical review committee shall engage in one or more of the following functions:
>
> (1) Evaluating and improving the quality of health care rendered by providers of health care;
>
> (2) Evaluating the need for and the level of performance of health care rendered;
>
> (3) Evaluating the qualifications, competence and performance of providers of health care; and

> (4) Evaluating and acting upon matters relating to the discipline of any individual provider of health care.

The Chestnut Lodge staff conferences were established by the hospital's governing board and therefore satisfy the subsection (b)(3) requirement that a committee must be "formed and approved" by a hospital's governing board.[4] The staff conferences also satisfy the requirement that a committee engage in "one or more" of the functions described in section 134A(c). Although the conferences in issue focuses on Florence Kappas, they were structured to review such matters as the progress of patient care and the implementation of programs in the hospital, as well as the operation of different wards in the hospital. The conferences functioned generally as a round table discussion of the problems involved in treating schizophrenic patients like Kappas. The discussions involving Kappas did not become a part of her medical records, but served as a focal point for reviewing the type of treatment being rendered at Chestnut Lodge. they were thus well within the ambit of sections 134A(c)(1) and (2).

The immunity afforded by section 134A(d) is not limited solely to disciplinary matters, but applies to "matters which are being reviewed and evaluated by the committee." These "matters" include improving the quality of health care, evaluating the need for and level of performance of health

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[4] There is likewise no question that the Chestnut Lodge is a "hospital" as defined under the then applicable statute, Md. Health Code Ann. art. 43, § 556(b) (1980), now codified under Md. Health-Gen. Ann. § 19-301(e) (1982).

care rendered, as well as disciplinary matters. The district court therefore properly excluded the conference reports as the proceedings of a "medical review committee."

We have reviewed the record, briefs and arguments concerning the other issues raised by Kappas and find no merit in them. The judgment of the district court is therefore affirmed.

AFFIRMED.

MURNAGHAN, *Circuit Judge*, concurring:

Interpretation of Maryland Code Article 43, Section 134(A)(d) resolves a question of considerable potential importance relating to the trial of medical malpractice cases. While I do not disagree withthe conclusion so carefully reached in the panel opinion, I perceive no need to agree either. For there is another, less extensive route to the same end result. I would not unnecessarily anticipate a decision by a Maryland court, especially the Maryland Court of Appeals, the final arbiter of the law of that State.

Kappas obtained the excluded conference reports through discovery, secured opinion letters from three physicians based in part on the contents of the conference reports, called two of them as expert witnesses where they were available to testify as to all relevant materials underlying their opinions, and was permitted to refer to the text of the conference reports in cross-examination of the witnesses for appellees.

Under those circumstances, I would simply rest decision affirming the judgment entered on the verdict below on F.R. Civ. P. 61.[1] I would leave for another day, and preferably another court, the construction of a statute raising several potentially difficult questions.

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[1] No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

No. 83-199

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LILIA KAPPAS,
Administratrix of the Estate of
Florence Kappas, deceased,
Petitioner,

v.

CHESTNUT LODGE, INC., *et al.*
Respondents.

JOINT BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Petitioner has set forth in her Brief the Question she wishes to present for review. Respondents would restate that issue as follows:

> WHETHER THE TRIAL JUDGE ERRED IN REFUSING TO ALLOW ADMISSION OF CERTAIN DOCUMENTS AS EXHIBITS BASED ON THE MARYLAND CODE PROHIBITION RELATING TO USE OF PROCEEDINGS OF MEDICAL REVIEW COMMITTEES, AND, IF HE DID IN FACT ERR, WHETHER PREJUDICE RESULTED

LIST OF PARTIES BELOW

The parties below are identified as follows:

A. At The Circuit Court Level

Chestnut Lodge, Inc.
Dexter M. Bullard, Jr. M.D.
Sol Herman, M.D.
Corrine Cooper, M.D.
John P. Fort, M.D.
Ping Nie Pao, M.D.
Johnathan Tuerk, M.D.
Lilia Kappas

B. At The District Court Level

All those listed in A, above.
John Saia, M.D.
Jaime Buenaventura, M.D.
Dexter M. Bullard, Sr. M.D.
Martin Cooperman, M.D.
Jerry Dowling, M.D.
Oswoldo Guimares, M.D.
Elizabeth Mohler
Robert R. Montgomery, M.D.
Dewayne Phillips, M.D.
Otto Will, M.D.
Suburban Hospital Association, Inc.

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IN THE

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OCTOBER TERM, 1982

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JOINT OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINION BELOW

The opinion rendered in this matter by the court below dated June 9, 1983, is attached as an appendix to the Petition Brief.

JURISDICTION

The Petitioner has indicated that this matter was tried as a diversity case in the Federal District Court for the District of Maryland pursuant to 28 U.S.C. § 1332(a)(1), and that jurisdiction in this Court is invoked on the basis of 28 U.S.C. 1254(1). It is submitted by the Respondents that no grounds exist for a determination by this Court as no question raising a constitutional issue has truly been raised by the Petitioner, nor has any conflict been demonstrated, nor have any of the other considerations set forth in Rule 19 been met. *See, e.g., Rice* v. *Sioux City Memo-*

rial Parks Cemetary. 349 U.S. 70, 75 S.Ct. 614, 99 L.Ed. 899 (1955).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

Petitioner has failed to set forth the Maryland statutory provisions involved herein. Therefore, Respondents have set them forth in an appendix.

STATEMENT OF THE CASE

On May 18, 1976, a survival action was commenced by the plaintiff below, Lilia Kappas, as administratrix of the estate of her sister Florence. Named as defendants in this action were Chestnut Lodge, Inc., together with a number of present and/or former employees of the Lodge (hereinafter the "Lodge defendants"). Also named were the Suburban Hospital and several of the physicians that treated Florence there[1] (hereinafter the "Suburban Hospital defendants"). The Complaint alleged medical malpractice, breach of contract and invasion of privacy on the part of the Chestnut Lodge defendants.

A jury trial was held in March, 1981 and the jury found for the defendants on all counts.[2] On March 30, 1981, Judge Young ordered that judgment be entered in favor of the defendants.

On April 3, 1981, the plaintiff filed a Motion for Judgment Notwithstanding the Verdict wherein plaintiff claimed, *inter alia;* error in the jury's determination that

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[1] Suburban Hospital and the individual Suburban defendants were severed from the instant action.

[2] Judge Young granted defendants' Motion for Directed Verdict and thereby refused to submit the plaintiff's claim of invasion of privacy against the Chestnut Lodge defendants to the jury; the malpractice claim against the Suburban Hospital defendants had previously been severed in the trial court.

the malpractice had not occurred; error in Judge Young's granting of defendants' Directed Verdict Motion as to the invasion of privacy count; error in Judge Young's bifurcation of the death issue and severance of the Suburban Hospital defendants from the case and error in the lower court's exclusion of the staff conference records as exhibits. Upon consideration of these issues, Judge Young denied the Motion in its entirety.

Subsequently, Ms. Kappas filed a Notice of Appeal (April 8, 1981) and the matter was docketed in the United States Court of Appeals for the Fourth Circuit on or about September 13, 1982. On or about October 25, 1982, Ms. Kappas filed her brief. These Respondents filed their brief on or about November 24, 1982, and Ms. Kappas filed a reply brief on or about December 13, 1982. Oral argument was had on January 13, 1983 and on June 8, 1983, the United States Court of Appeals for the Fourth Circuit issued an opinion affirming the decision made below. The Petition for Certiorari followed.

STATEMENT OF FACTS

The salient facts impacting on the question presented by the Petitioner may be briefly stated. In response to a discovery request filed below, the Lodge defendants turned over a large number of documents to Ms. Kappas' attorneys, among which were non-verbatim transcripts of the staff conferences held regarding Florence Kappas at Chestnut Lodge in 1965, 1967, 1969 and 1973.[3] These documents were utilized by Ms. Kappas' experts in formulating their opinions,[4] prior to trial.

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[3] The staff conferences are contained in the Appendix filed below with the Fourth Circuit Court of Appeals.

[4] *See*, Report of Dr. E. James Lieberman, M.D. dated June 30, 1979 (Appendix below pages 052-065) and Report of Dr. Alan J. Tuckman dated July 2, 1975 (Appendix below pages 066-074).

Prior to trial commencing, the Lodge defendants moved, *in limine*, to preclude Ms. Kappas from introducing into evidence the staff conferences, citing Article 43, § 134A(d) of the Annotated Code of Maryland. Ms. Kappas opposed the motion. The trial judge granted the motion, but specifically held that the staff conferences could be utilized by Ms. Kappas' counsel in cross examining witnesses (*See*, Docket Entry No. 360).

In fact, counsel for Ms. Kappas did utilize the staff conferences in cross examining witnesses and at times paraphrased sections of the conference reports in formulating his questions, and for impeachment.[5] Judge Murnaghan summarized this very well in the Fourth Circuit's decision, in his concurring opinion where he said:

> Kappas obtained the excluded conference reports through discovery, secured opinion letters from three physicians based on the contents of the conference reports, called two of them as expert witnesses where they were available to testify as to all relevant materials underlying their opinions, and was permitted to refer to the text of the conference reports in cross-examination of the witnesses for the appellees.

(*See*, Petitioner's Appendix, pg. 8a).

SUMMARY OF ARGUMENT

The trial judge correctly ruled that, pursuant to the Annotated Code of Maryland, Article 43, § 134A, written reports of staff conferences held at Chestnut Lodge, Inc. were not admissible as substantive evidence in Ms. Kappas' case against the Lodge defendants. The statute clearly applied to those documents and precluded their introduction in evidence.

Assuming, *arguendo*, that the documents were not rendered inadmissible by the statute, and that the trial

[5] *See*, Transcript of Proceedings, pgs. 170-171, 710-719, 723.

judge erred in ruling that they not be considered, no prejudice resulted, as the trial judge allowed the staff conferences to be utilized for impeachment purposes and also allowed Mrs. Kappas' counsel to formulate hypothetical questions based thereon. Additionally, participants in the actual staff conferences were called and were examined regarding the same.

ARGUMENT

THE CIRCUIT COURT DID NOT ERR WHEN IT UPHELD THE DISTRICT COURT, RULING THAT RECORDS OF STAFF CONFERENCES WERE PROPERLY EXCLUDED AS SUBSTANTIVE EVIDENCE. NO DENIAL OF A RIGHT TO A FAIR TRIAL OR DUE PROCESS WAS SUFFERED BY PETITIONER AS A RESULT OF THAT RULING

A. The "Staff Conferences" Were Properly Characterized For Inclusion Under Art. 43, Section 134A Of The Maryland Code Defining "Medical Review Committees"

The Petitioner's (Kappas') primary contention is that she was prejudiced by the lower court's exclusion of the Medical Review Committee transcripts (*See*, Petitioner's Brief at 6-8) and that by precluding their admission into evidence as exhibits, the District Court committed reversible error. She further avers that by upholding the District Court, the Fourth Circuit committed error. Clearly, her position is without merit.

Ms. Kappas supports this argument by first proposing that the transcripts in question fall outside the scope of protection created by § 134A.[6] Whether the statutory scope of § 134A was intended by the legislature to include these transcripts was never doubted by Judge Young in the District Court; his sole concern regarded the applicability question. Nor was it doubted by the Appellate Court below (*See*, Petitioner's Appendix 4a-6a). Unfor-

[6] Section 134A has now been replaced by Health Organizations § 14-601 of the Annotated Code of Maryland.

tunately, the case law interpreting this statute is silent on the characterization question.[7] Looking to the language of the statute, the relevant sections read:

> Section 134A(a)(2):
>
> "Medical review committee" means a committee or board described in subsection (b) of this section, which is engaged in carrying out *one or more* of the functions described in subsection (c) of this section; . . . [emphasis added]
>
> Section 134A(b)(3):
>
> A committee of the medical staff or other committee of a "hospital" or "related institution" . . . if the committee was formed and approved by the governing board of the hospital or related institution . . .
>
> Section 134A(c):
>
> Functions of medical review committee—The medical review committee shall engage in one or more of the following functions:
>
> (1) Evaluating and improving the quality of health care rendered by providers of health care;
>
> (2) Evaluating the need for and the level of performance of health care rendered . . .

The section which barred the admissibility of these matters was Article 43, § 134A(d), which read in pertinent part:

> . . . the proceedings, records, and files of a medical review committee are neither discoverable nor

[7] The lone case interpreting this statute, *Unnamed Physician* v. *Commission on Medical Discipline*, 258 Md. 1, 400 A.2d 396 (1979), assumed that the records of a similar medical committee would have been inadmissible in a proper "civil action." It never explored the characterization issue. The court found the transcripts in the *Unnamed Physician* case admissible solely because the administrative hearing at which the issue of their admission had arisen was held not to have been a "civil action" under the statute.

> admissible into evidence in any civil action arising out of matters which are being reviewed and evaluated by the committee . . .

Thus, the statute defines a test for deciding whether the "staff conferences" at issue were properly characterized as inadmissible. Simply restating the relevant sections of the statute set out above, if these conferences were authorized by the Chestnut Lodge administration and functioned as a means for "evaluating and improving the quality of health care rendered" or "evaluating the need for and level of performance of health care rendered" than they were properly characterized by the lower court.

Because the case law defining this statute has never dealt with the characterization issue, the Lodge defendants submit that a careful statutory interpretation is required to define the legislative intent. It is a well-settled rule of statutory interpretation that the legislative intent is paramount in giving effect to a statute. *Unnamed Physician* v. *Commission on Medical Discipline*, *supra*, 400 A.2d at 401. In defining the intent of the legislature, the courts of Maryland have consistently held:

> The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source of all statutory construction.

State v. *Berry*, 287 Md. 491, 413 A.2d 557 (1980) at 560. *See also*, *Comptroller of Treasury* v. *John C. Louis Co.*, 285 Md. 157, 404 A.2d 1045 (1979).

In *Mauzy* v. *Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979), the Court stated:

> Where . . . statutory language is unambiguous, there is no need to look elsewhere or to consider various rules of statutory construction. Instead the

> statutory language should be given effect in accordance with the plain meaning of the words.

Id. at 1096. *See also, State* v. *Berry, supra,* where the same court echoed:

> When the words used convey a clear and plain meaning there is no need to look beyond the statute to ascertain the legislative intent.

Id. at 560.

Applying these rules to the statute here, because the language of Article 43, § 134A is plain, simple and unambiguous, the statutory language alone should control in determining the legislative intent. *Mauzy* v. *Hornbeck, supra.*

Looking to the statute, in order for the transcripts to initially qualify as "medical review committee" records, the conferences must have been authorized by the "governing board of the hospital." *See,* § 134A(b)(3). At the trial of this matter, a member of the governing board of Chestnut Lodge, Dr. Dexter Bullard, testified that these conferences were convened by order of the Board as a systematic means of evaluating the treatment programs at the Lodge. Thus, there is no question that these meetings were in fact sufficiently "formed and approved."

Secondly, proper characterization as a "medical review committee" requires that the committee engage in "one or more" of the functions listed in Article 43, § 134A(c), set out *supra.* In satisfaction of this requirement, during defendants' Motion *in Limine,* the medical director of Chestnut Lodge, Dr. Dexter Bullard, testified as to the nature, purpose and content of the medical review committees. Dr. Bullard described the functions of the Board and the role that these medical review committee meet-

ings played in the Board's evaluation of the physicians and programs employed at the hospital as follows:

(Mr. Mason)

Q. AND WHAT IS THE PURPOSE OF THE BOARD? WHAT ARE THE DUTIES OF THE BOARD?

(Dr. Bullard)

A. TO REVIEW AND EVALUATE THE GENERAL HOSPITAL TREATMENT PROGRAMS.

Q. AND IN LINE WITH THAT DUTY, HAVE—HAS THE LODGE SET UP ANY SYSTEMATIC WAY OF DOING THAT?

A. YES, YEARS AGO, I THINK PERHAPS MORE THAN 30 YEARS AGO, IT WAS ESTABLISHED THAT A CONFERENCE BE SET UP AT WHICH VARIOUS PATIENTS AND OTHER MATTERS WOULD BE PRESENTED TO THE MEDICAL STAFF FOR REVIEW AND EVALUATION . . .

Q. WHAT WAS THE PURPOSE OF THIS STAFF CONFERENCE ON MEDICAL REVIEW COMMITTEE MEETINGS?

A. TO EVALUATE THE PATIENT CARE AND PROGRAMS AT THE HOSPITAL.

Summing up, the witness stated that the overall purpose for which these meetings were convened was ". . . *to evaluate how the hospital* is functioning and the programs and the care of the patient population and the implementation of all the programs in the hospital" [emphasis added].

The Petitioner's counsel argued unsuccessfully at trial that these conferences were merely one aspect of the individual care given to Florence Kappas at Chestnut

Lodge and as such, outside the purview of § 134A. Clearly that interpretation is incorrect. Although each of the committee meetings at issue did specifically focus upon the treatment rendered to the decedent, it is clear that these meetings were retrospective in nature, rather than prescriptive for the care of Florence Kappas. No advice was given to the treating physician in these transcripts. Rather, the discussions amounted to intellectual inquiries into the successes and failures which could be encountered in the treatment of a schizophrenic patient. The participants postulated possible explanations for the decedent's symptoms and examined how different treatments and the transition from one treatment or physician to another might alter the progress of this type of patient. The aim of these discussions, as Dr. Bullard testified, was to educate the employees of the Lodge and thereby improve the quality of the health care. If the members of the committee were enlightened by these conferences and the care generally administered improved, then Florence, too, would have benefited; however, it is clear that the purpose for the conferences was much broader than an interest in the care of any one patient.

Petitioner continues to maintain that the lower court erred because these meetings did not involve a disciplinary purpose. This notion is, of course, absurd in light of the much broader and controlling language of the statute. *See, Mauzy* v. *Hornbeck, supra*. Ms. Kappas apparently asks this Court to ignore Article 43, §§ 134A(c)(1) and (c)(2) and apply only Article 43, §§ 134(c)(3) and (c)(4) in defining the legislative intent and the scope of proper characterization under the statute. Such a tactic has long been disdained:

> . . . when the statute is free from ambiguity, *the court may not disregard* the natural impact of the words so as to make the statute express an intention

> which is different from its plain meaning. [Emphasis added.]

See, State v. *Berry, supra,* at 560.

Thus, the language of Article 43, § 134A must govern this Court's interpretation. In light of the statute's clear language, the Petitioner's unfounded attempts to narrow the breadth of the statute must fail. *Mauzy* v. *Hornbeck, supra.*

As the majority opinion below reflected, the above analysis is correct. In that opinion, Judge Sprouse indicated as follows:

> Kappas contends that the statute is designed only to protect the confidentiality of medical review committees functioning in a peer review or disciplinary capacity. She argues that it should not be interpreted to immunize the staff conference reports excluded by the trial court. Decisions of Maryland courts provide no guidance on the scope of section 134A. The plain language of the statute, however, reflects that the Maryland legislature intended a broader application than that urged by Kappas. It is true that the statute immunizes only the proceedings, records, and files of a "medical review committee." The definition of such a committee, however, is broad enough to include the Chestnut Lodge staff conferences.
>
> * * * *
>
> The Chestnut Lodge staff conferences were established by the hospital's governing board and therefore satisfy the subsection (b)(3) requirement that a committee must be "formed and approved" by a hospital's governing board. The staff conferences also satisfy the requirement that a committee engage in "one or more" of the functions described in section 134A(c). Although the conferences in issue focused on Florence Kappas, they were structured to review such matters as the progress of patient care and the

> implementation of programs in the hospital, as well as the operation of different wards in the hospital. The conferences functioned generally as a round table discussion of the problems involved in treating schizophrenic patients like Kappas. The discussions involving Kappas did not become a part of her medical records, but served as a focal point for reviewing the type of treatment being rendered at Chestnut Lodge. They were thus well within the ambit of sections 134A(c)(1) and (2).
>
> The immunity afforded by section 134A(d) is not limited solely to disciplinary matters, but applies to "matters which are being reviewed and evaluated by the committee." These "matters" include improving the quality of health care, evaluating the need for and level of performance of health care rendered, as well as disciplinary matters. The district court therefore properly excluded the conference reports as the proceedings of a "medical review committee."

(*See*, Petitioner's Appendix 4a-7a) (footnotes omitted).

B. The District Court's Holding That § 134A Should Be Applied Was Proper

Although these staff conferences/medical review committee transcripts were properly characterized by the lower court, because the governing statute, Article 43, § 134A, was enacted in Maryland subsequent to these documents coming into existence, the Petitioner argues that the statute should only apply to these documents if the legislature intended § 134A to be applied retroactively. Fortunately, the single case that has reached the Maryland Court of Appeals concerning the admissibility of these types of records decided this issue. *See*, *Unnamed Physician* v. *Commission on Medical Discipline*, *supra*. In that case, the court affirmed the lower court's finding that the statute should be applied even though the

records at issue came into being prior to the statute's enactment:

> An appellate court must decide a case according to existing laws even though the trial court's judgment, which was correct when made, just be reversed . . . unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intention.

See, id., 39 Md. App. 170, 384 A.2d 766 (1977) at 769-70.

The evidence at issue in the *Unnamed Physician* case was the record from a hospital review committee held in March of 1975, over two years prior to the passage of the statute applied in the case to test its admissibility.[4] Applying the rule of applicability from the *Unnamed Physician* case, this Court need not consider the legislative intent. The Petitioner does not claim a loss of vested rights as a result of the application of Article 43, § 134A, but rather she relies solely on an argument that, as a matter of law, the statute is not applicable. In light of *Unnamed Physician's* clear holding to the contrary, the appellant's contention must fail.

In additional support of her contention the Petitioner states that in order to be privileged, these staff conferences/medical review committees must have originated in the confidence that they would not be disclosed (Petitioner's Brief at 7). However, although Article 43, § 134A was certainly intended to protect confidences, it does not create a "privilege" which in all cases must be protected. Rather, Article 43, § 134A states a rule as to admissibility and/or discoverability in a civil action only.

In the case of *Bredice* v. *Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970), the United States District

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[4] Article 43, § 134A became effective on May 5, 1977.

Court for the District of Columbia held the type of protection defined in Article 43, § 134A to be justified even where no expectation of protection was present. In that case, there was no statute on which to base the defendant's refusal to produce medical review committee records. Thus, no grounds for an expectation of confidentiality could have existed. Instead, the court recognized the protection pursuant to the public policy in favor of improving health care.

In *Bredice*, the committee, as in the instant case, had been formed in order to assure the accreditation of the hospital involved:

> The minutes and reports of the boards or committees of the hospital are records of medical staff reviews by committees of the doctors acting pursuant to the requirements of the Joint Commissions on Accreditation of Hospitals.

Id. at 250. Despite the lack of a statutory expectation, then, the court held the records of these meetings should be kept from both discovery and admissibility at trial. It is highly unlikely that the court would have ruled any differently had there been a statute like Article 43, § 134A enacted subsequently. If anything, such an enactment would support rather than weaken the reasons for excluding the evidence.

In short, because the documents at issue satisfy the requisite conditions under the statute, pursuant to the clear language of Article 43, § 134A and its legislative history, the decision of the District Court, as affirmed by the Circuit Court, to exclude the records of the staff conferences/medical review committees was correct.

C. By Producing The Records Of The Medical Committees Below, The Health Care Providers Did Not Waive Their Right To Have Them Excluded From The Evidence Presented At Trial

The final argument raised by the administratrix for reversal of Judge Young's order excluding the evidence below, and the Circuit Court's decision, is that the Lodge defendants waived their rights under the statute by allowing discovery of the medical review committee records. However, the language of Article 43, § 134A, contains protection that inures both during discovery and at trial:

> The proceedings, records, and files of a medical review committee are *neither* discoverable *nor* admissible into evidence. [Emphasis added.]

See Article 43, § 134A(d). Petitioner contends that by allegedly waiving their right to refuse production of these records in discovery, the health care providers also waived any later objection to their admission into evidence. However, the statute is worded in the conjunctive, and thus confers two separate rights. The scope of admissibility and of discoverability have long been controlled by different rules, and it is clear that the legislature intended to extend two, rather than a single, benefits under the statute. *See*, Federal Rule of Civil Procedure 26(n)(1). Because many things which are discoverable are not admissible, it is clear that discovery does not control admissibility. The obvious reason for this distinction is that some things which might lead to admissible evidence and which are discoverable, might nonetheless be justly kept from the trier of fact due to their violating one or more of the myriad of evidentiary exclusions.

D. Even If The Evidence Was Improperly Excluded, Because Plaintiff's Counsel Was Allowed Its Use In Examining Witnesses, The Exclusion Was Harmless Error

Assuming, *arguendo*, that these staff conferences were improperly included within the statutory protection, the prejudice worked upon the plaintiff was minimal and thus Judge Young's error was harmless. At trial, the judge ruled the records inadmissible as exhibits but allowed plaintiff's counsel to pose hypothetical questions from them in questioning plaintiff's experts. The records were also allowed to be used for the purpose of impeaching the testimony of the health care provider's witnesses.[9]

Thus, the only "prejudice" to the Petitioner here was that these records were not admitted as distinctly probative evidence. However, this prejudice is certainly illusory in light of the uses that were allowed. The best evidence of the conduct of the committees and the matters discussed thereby would of course be the testimony of the participants. The Federal Rules prefer the actual appearance of the witness whose prior statements counsel is desirous of entering and hence, they generally allow for the admission of an actual transcript only if the prior witness is "unavailable to appear personally." Federal Rule of Evidence 804(b)(1). The Petitioner here never alleged that those who took part in the medical review committees were unavailable to testify at trial. In fact,

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[9] The record of the trial of this matter is replete with plaintiff's counsel, Mr. Robinson, referring to the content of the previously excluded medical review committee records for impeachment purposes of both the health care providers and their experts. Judge Young's statement at page 711 of the record exemplifies the trial court's attitude regarding the use of this evidence. The court: "I have indicated earlier that you may use something that you have to ask questions. I will not allow you to read from it. . . ." *See*, pgs. 710-719 and pg. 723 of the trial transcripts.

many of the participants did appear as witnesses and Judge Young explicitly allowed Ms. Kappas' counsel the use of this evidence in his attempt to impeach their testimony. As the Petitioner has strenuously argued, the content of these documents primarily concerned the treatment rendered by Chestnut Lodge to the decedent, Florence Kappas. Because more creditable evidence was available to the administratrix at trial, that is, the witnesses themselves, to prove the details of said treatment, the Petitioner was not prejudiced by the exclusion of the evidence at issue.

Pursuant to the sound rules governing reversals, a party claiming error has the burden of proving both error and substantial prejudice in order to justify reversal. Should either proof fail to obtain, reversal, is precluded. *Beahm* v. *Shortall*, 279 Md. 321, 368 A.2d 1005 (1977). Succinctly, because no harm came to Ms. Kappas' case due to the exclusion of medical review committee records at the lower court the trial court's ruling was properly affirmed by the Circuit Court below, and therefore the Petition should be denied.[10]

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[10] This matter was covered quite clearly by Judge Murnaghan of the Circuit Court in his concurring opinion. *See* Statement of Facts, *supra*.

CONCLUSION

For the foregoing reasons it is respectfully urged that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Joint Brief for the Respondents were mailed, postage prepaid, this 12 day of September, 1983, pursuant to this Court's Rule 28.5(b), to:

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APPENDIX

APPENDIX

Act. 43, § 134A, Maryland Annotated Code. Medical review committees.

(a) Definitions.—(1) In this section the following words have the meanings indicated.

* * *

(2) "Medical review committee" means a committee or board described in subsection (b) of this section, which is engaged in carrying out one or more of the functions described in subsection (c) of this section; and

(3) "Provider of health care" means any individual or organization licensed by law to provide health care to human beings, and it may not be construed to mean any nursing institution conducted by and for those who rely upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(b) What constitutes a medical review committee.—The medical review committee is a committee or board described as follows:

(1) A regulatory board or agency created by State or federal law to license, certify or discipline any provider of health care; or

(2) A committee of the Medical and Chirurgical Faculty of this State and its component societies or a committee of any other professional society or association comprised of licensed providers of health care; or

(3) A committee of the medical staff or other committee of a "hospital" or "related institution" as defined under this article if the committee was formed and approved by the governing board of the hospital or related institution, or the committee operates pursuant to written bylaws that have been approved by the governing board of the hospital or related institution; or

(4) Any individual or organization contracting with an agency of the State or federal government (such as a professional standard review organization) to perform any of the functions described in subsection (c) of this section; or

(5) Any individual or organization contracting with a provider of health care to perform any of the functions described in subsection (c) of this section if the functions are limited to review of services provided by the provider of health care.

(6) Any committees appointed or established in a local health department for review purposes.

(c) Functions of medical review committee.—The medical review committee shall engage in one or more of the following functions:

(1) Evaluating and improving the quality of health care rendered by providers of health care;

(2) Evaluating the need for and the level of performance of health care rendered;

(3) Evaluating the qualifications, competence and performance of providers of health care; and

(4) Evaluating and acting upon matters relating to the discipline of any individual provider of health care.

(d) Confidentiality of proceedings, records, and files of committee.—The proceedings, records, and files of a medical review committee are neither discoverable nor admissible into evidence in any civil action arising out of matters which are being reviewed and evaluated by the committee. This immunity does not apply to a civil action brought by a party to the proceedings of the review committee and claiming to be aggrieved by the decision of the committee. Also, this immunity does not extend to any records or documents considered by the committee which would otherwise be subject to discovery and introduction into evidence in a civil action.

(e) Immunity from liability for damages.—A medical review committee, individual members of a committee, or any person (1) providing information to, (2) participating in, or (3) contributing to the function of a committee are immune from liability for damages from their activity if their actions are taken in good faith and within the scope of the committees' jurisdiction.

(f) Application of subsections (q) and (r) of § 130.—Notwithstanding the foregoing provisions of subsections (d) and (e) of this section, the provisions of subsections (q) and (r) of Article 43, § 130, shall apply with respect to the Commission on Medical Discipline and to other bodies to the extent that they act in an investigatory capacity with respect to that Commission. (1976, ch. 722).

Health Occupations, Article, Maryland Annotated Code, § 14-601. Medical review committees.

(a) Definitions.—(1) In this section the following words have the meanings indicated.

* * *

(2) "Medical review committee" means a committee or board that:

(i) Is within one of the categories described in subsection (b) of this section; and

(ii) Performs any of the functions listed in subsection (c) of this section.

(3) (i) "Provider of health care" means any person who is licensed by law to provide helth care to individuals.

(ii) "Provider of health care" does not include any nursing institution that is conducted by and for those who rely on treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination.

(b) Description of medical review committee.—For purposes of this section, a medical review committee is:

(1) A regulatory board or agency established by State or federal law to license, certify, or discipline any provider of health care;

(2) A committee of the Faculty or any of its component societies or a committee of any other professional society or association composed of providers of health care;

(3) A committee appointed by or established in a local health department for review purposes;

(4) A committee of the medical staff or other committee of a hospital or related institution, if the governing board of the hospital or related institution forms and approves the committee or approves the written bylaws under which the committee operates;

(5) Any person, including a professional standard review organization, who contracts with an agency of this State or of the federal government to perform any of the functions listed in subsection (c) of this section; or

(6) Any person who contracts with a provider of health care to perform any of those functions listed in subsection (c) of this section that are limited to the review of services provided by the provider of health care.

(c) Functions of medical review committee.—For purposes of this section, a medical review committee:

(1) Evaluates and seeks to improve the quality of health care provided by providers of health care;

(2) Evaluates the need for and the level of performance of health care provided by providers of health care;

(3) Evaluates the qualifications, competence, and performance of providers of health care.

(d) Records of medical review committee not admissible or discoverable—in general.—Except as otherwise provided in this section, the proceedings, records, and files of a medical review committee are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being reviewed and evaluated by the medical review committee.

(e) Same—Exceptions.—Subsection (d) of this section does not apply to:

(1) A civil action brought by a party to the proceedings of the medical review committee who claims to be aggrieved by the decision of the medical review committee; or

(2) Any record or document that is considered by the medical review committee and that otherwise would be subject to discovery and introduction into evidence in a civil trial.

(f) Immunity from civil liability.—A person who acts in good faith and within the scope of jurisdiction of a medical review committee is not civilly liable for any action as a member of the medical review committee or for giving information to, participating in, or contributing to the function of the medical review committee.

(g) Application of §§ 14-510 and 14-511.—Notwithstanding this section, §§ 14-510 and 14-511 of this title apply to:

(1) The Commission; and

(2) Any other entity, to the extent that it is acting in an investigatory capacity for the Commission.